

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1717 of 2003

with

Civil Application No.7231 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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AHMEDABAD MUNICIPAL CORPORATION

Versus

AMBALAL P VYAS

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Appearance:

1. First Appeal No. 1717 of 2003  
MR HS MUNSHAW for the appellant  
Mr.Hartik C. Rawal for Respondent

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CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 09/09/2003

COMMON ORAL JUDGEMENT

1. The appeal is admitted. Learned advocate, Mr.

Hartik C.Rawal, waives service of notice of admission on behalf of the respondent. At the request of the learned advocates for the parties, this appeal is taken up for hearing today.

2. The appellant-Ahmedabad Municipal Corporation, by filing this appeal, has challenged the judgment and decree dated January 16, 2002, passed by the learned Judge, Court No.19, City Civil Court, Ahmedabad, in Civil Suit No.6323 of 1995, by which a decree was passed in favour of the respondent (original plaintiff) directing the appellant (original defendant) to pay an amount of Rs.14,623/- with interest at the rate of 12% per annum from the date of the filing of the suit till realization with costs.

3. It is not disputed by the learned advocates appearing for the parties that the respondent-original plaintiff had claimed the amount of Rs.12,493/- which was deposited by him with the Corporation for getting the benefit of Pension Scheme with interest at the rate of 9.5% only. The learned Judge, in paragraph 9 of the judgment, had also recorded a finding that the plaintiff was entitled to interest at the rate of 9.5% only on the amount deposited by him with the Corporation. Despite the above clear finding, the learned Judge has awarded interest at the rate of 12% per annum. Thus, the learned Judge has committed an error apparent on the face of the record in awarding interest at the rate of 12%, instead of 9.5%, per annum, which is inconsistent with the finding recorded by him in paragraph 9 of the judgment. Hence, the impugned decree is required to be modified awarding interest at the rate of 9.5% per annum on the amount deposited by the respondent with the Corporation.

4. No other point is raised by the learned advocate for the appellant.

5. As a result of foregoing discussion, this appeal is partly allowed. The judgment and decree dated January 16, 2002, passed by the learned Judge, Court No.19, City Civil Court, Ahmedabad, in Civil Suit No.6323 of 1995, is modified to the extent that the respondent, original plaintiff, is entitled to the amount of Rs.14,623/- with interest at the rate of 9.5% per annum from the date of the filing of the suit till realization with costs. Decree be modified accordingly. There shall be no order as to costs.

6. Since the appeal is partly allowed, Civil Application for stay would not survive and is disposed of

accordingly.

(M.H. Kadri, J.)

(swamy)